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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention

Addendum

Information received from Serbia on follow-up to the concluding observations*

[Date received: 24 May 2016]

I. Introduction

1. The Committee on Enforced Disappearances at its 8th session in Geneva, on February 4 and 5, 2015 reviewed the Initial report of Republic of Serbia on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance and in this regard accepted Concluding Observations with recommendations the Republic of Serbia should apply (CED/C/SRB/CO/1). Pursuant to paragraph 36 of the Concluding Observations, The Committee on Enforced Disappearances requested from Republic of Serbia to provide all information on implementation of the recommendations as per paragraphs 11, 14 and 28 within a 12-month period.

II. The offence of enforced disappearance

Paragraph 11 The Committee recommends that the State party adopt the necessary measures to accelerate the process to make enforced disappearance an autonomous offence in line with the definition contained in article 2 of the Convention as well as to ensure that the offence be punishable by appropriate penalties which take into account its extreme seriousness and that a system of superior responsibility that is in accordance with article 6, paragraph 1 b), of the Convention be applicable to this offence.

* The present document is being issued without formal editing.

2. In the oncoming period, Republic of Serbia intends to harmonize its criminal legislation with the definition from Article 2 of the Convention. Since the amendments to the Criminal Code are required more than once during the process of accession process on EU membership, at this point it is not possible to give a precise assessment of these changes, which will also include the issue in general, bearing in mind that its dynamics are in accordance with the timetable dictated by several negotiation chapters.

III. Investigation of enforced disappearances committed in the context of past armed conflicts

Paragraph 14 The Committee recommends that the State party ensure that all cases of enforced disappearance that may have been committed by agents of the State party or by persons or groups of persons acting with their authorization, support or acquiescence in the context of past armed conflicts are investigated thoroughly, and impartially without delay, including guarantees for full access to the relevant archive; and that those found responsible, including the commanders and civilian superiors, are punished in accordance with the gravity of their acts. The State party should also guarantee that sufficient personnel and technical and financial resources are provided to OWCP and any other competent authorities so that they can discharge their duties promptly and effectively.

3. National authorities of the Republic of Serbia, primarily Office of the War Crimes Prosecutor discovered and processed a large number of war crimes in which the killed were found in mass graves in Batajnica, Petrovo Selo and Lake Perucac. Cases of war crimes in which the responsible of war crimes have been prosecuted are "Suva Reka," Bitici, "Cuska" and indictment was filed in "Ljubenić" case.

4. The Office of the War Crimes Prosecutor has discovered and identified all persons who participated in the transfer of bodies from Kosovo and Metohija to locations in Serbia, but was not able to establish the necessary link between the persons who have committed war crimes and persons who performed "sanitation" of the location. Due to the lack of that connection it was not possible to determine the responsibility for war crimes suspects for carrying out the "sanitation" of location.

5. Besides all the results achieved so far, the paramount importance for implementation of the Concluding recommendations of the Committee on Enforced Disappearances, as well as for future results in general in war crimes activities in the field, have been foreseen by the Action Plan for Chapter 23 (Judiciary and Fundamental Rights) in the accession process to the European Union. The Action Plan foresees the adoption of the National Strategy for Processing War Crimes.

6. On 20 February 2016, the Government adopted National Strategy for Processing War Crimes for the 2016-2020 period. The objective of this strategy is to significantly improve the efficiency of the investigation and prosecution of war crimes in Serbia, which will be reflected in: combating impunity for war crimes, regardless of the character and status of the perpetrator; judiciary support through the promotion of regional cooperation and harmonization of court practice in order to achieve proportionality in sentencing; improved mechanisms for the protection and support of victims and witnesses.

7. A special part of the National Strategy refers to: increase the efficiency of proceedings for war crimes before the authorities of the Republic of Serbia; protection of witnesses and victims; support for victims and witnesses; defense of the accused; War crimes trial and the issue of missing persons; Cooperation with the International War Crime Tribunal for former Yugoslavia; regional and wider international cooperation and improving the general attitude in public towards the issue of war crimes trials.

8. The National Strategy envisages establishment of a database of all the events that occurred on the territory of the former Yugoslavia, which by their nature and severity may constitute a war crime. Additionally, the adoption and implementation of the strategy of prosecutors to prosecute war crimes and prescribing criteria for determining the priority of war crimes was envisaged, that will also include cases of mass enforced disappearances committed in the context of the armed conflict in the former Yugoslavia. The prioritization of cases will enable the correct routing of authority resources investigating crimes to more complex cases with clear criteria established by the National Strategy

9. National Strategy envisages improvement of the capacity of the Office of the War Crimes Prosecutor, as well as the improvement of the status and effectiveness of the Department for Discovering War Crimes within the Ministry of Internal Affairs.

10. In connection with the improvement of the system of support and protection of witnesses and victims in war crimes cases, the national strategy defines the following objectives: increasing the capacity of agencies dealing with war crimes witnesses support during all phases of the criminal proceedings (Agencies helping and supporting victims and witnesses of the Higher Court in Belgrade, Office of the War Crimes Prosecutor and the Protection Unit of the Ministry of Interior); establishment of the national network of support services for victims and witnesses; improved regional cooperation in the field of providing support to victims and witnesses

11. Regarding the issue of missing persons, the National Strategy foresees activities in achieving the following objectives: improved regulatory framework relevant to resolving the fate of missing persons; further improvement of the Prosecutor proceedings relevant to discovery of information on mass graves; improvement of institutional and administrative capacities of state party involved in the process of discovering the fate of missing persons as well as their mutual cooperation; improvement of regional and wider international cooperation in resolving the fate of missing persons

12. Regarding the responsibility of commanding officers and civilian superiors, the National Strategy recommends the application of the international criminal law principles. National Strategy and Draft of the Prosecutorial Strategy for Processing War Crimes provides that the position of suspects should not be an obstacle to criminal prosecution. For this purpose, as an activity greater cooperation with prosecutors of the International Criminal Tribunal for the Former Yugoslavia is envisaged as well as the Residual Mechanism for International War Crime Tribunals that will be used after examining the archives in The Hague, cooperate in complicated cases of violations of international criminal law, including cases against defendants who, at the time when the crimes were committed or today, hold higher positions. As part of the activities with the prosecution of the International War Crime Tribunal on the Former Yugoslavia, there are live activities in terms of transferring the knowledge and experience to the authorities of the Republic of Serbia, so that the Office of the War Crime Prosecutor has already organized for their employees, several lectures on various topics held by experienced prosecutors from the International War Crime Tribunal on the former Yugoslavia. Cooperation with the International War Crime Tribunal on the former Yugoslavia is on daily basis and is executed through the War Crimes Liaison officer who physically resides in the International War Crime Tribunal on the former Yugoslavia in The Hague.

IV. The search of missing persons from Kosovo conflict[1]

Paragraph 28 In light of article 24, paragraph 3, of the Convention, the Committee recommends the State party to continue and intensify its efforts within the framework of the Working Group on Missing Persons with a view to achieving further progress in the search of the missing persons and, in the event of death, the identification of their remains.

13. Due to importance of the missing person issue, especially given its humanitarian character, cooperation with EULEX and the provisional institutions in Kosovo and Metohija continues through the existing mechanism of the Working Group on Missing Persons in the Belgrade – Pristina dialogue.

14. Working group for persons listed as missing, within the Belgrade – Pristina dialogue, was founded in 2004. Meetings of the Working Missing Persons group are held under the patronage of the Special Representative of the Secretary-General of the United Nations, in the context of resolution 1244 (1999) of the UN Security Council. The working group consists of Belgrade and Pristina delegations (representatives of the UN and the provisional institutions), chaired by the International Committee of the Red Cross. The Working Group includes representatives of the International Commission on Missing Persons, members of the diplomatic corps of countries that have their own mission in Kosovo, the OSCE and representatives of associations of families of missing persons in the capacity of observers. The Working Group on Missing Persons is acting in accordance with its mandate and persists despite many challenges and as such for Republic of Serbia still represents the only framework for finding missing persons from the Kosovo and Metohija conflict.

15. During 2015 there was a delay in the Working Group activities. Recognizing the consequences that may arise in resolving this humanitarian issue, the Belgrade delegation insisted to continue with the meetings of the Working Group.

16. After a 12-month break, on 13 November 2015 and 9 December 2016 in Pristina, the meeting of the Working Group on Missing Persons was held, where the activities in connection with the examination of the terrain at the site of the Kizevak mine was presented, and carried out as per the instructions of the War Crimes Prosecutor, with separate monitoring by the representatives from Pristina delegation and international organizations in accordance with their mandate.

17. Pristina delegation undertook the obligation to complete the documentation related to the morgue registers on the Kosovo and Metohija territory (Peja, Pristina, Prizren), which would establish the city of burial remains of the Serbian and non-Albanian nationality registered as missing. Belgrade delegation has acted in accordance with all requirements of the Pristina delegation related to the field check and locating the possible graves in central Serbia at two locations namely: Novi Pazar, Kozarevo - in the period from 23 to 24 April 2015 (no mortal residues found) and the municipality of Raska, Kizevak mine, where operations started on 9 November 2015, but were suspended on 12 December 2015 due to harsh weather conditions. Continuation of operations is planned for March 2016, with first appropriate conditions.

18. The next meeting of the Working Group on Missing Persons, which would be open to general public is planned for March 2016 in Belgrade.

[1] Reference to Kosovo shall be understood in full compliance with the UN SC Resolution 1244 (1999) without prejudice to the status of Kosovo.

19. Representatives of the Republic of Serbia have actively participated in several regional meetings of the relevant bodies relevant to tracing missing persons in the region, organized by the International Commission for Missing Persons in order to create "regional list of missing persons" or a database of active cases of missing persons in the Western Balkans as well as improving bilateral and multilateral cooperation in the field. The Republic of Serbia supported the initiative and recognized the goal of establishment of such an operational database that can be a useful mechanism for establishing records and solving the cases of missing persons. Database of active cases of missing persons for the Western Balkans would include, in the first phase, all active cases based on the criteria of the International Committee of the Red Cross regarding the minimum of information, and in the second stage would include a list of solved cases. The database would be open, periodically updated and published on the basis of consensus of all participants who took part in creating it.

20. The Belgrade delegation insisted on the position that a consolidated list of missing persons on Kosovo and Metohija territory of, which is the result of the joint work of the International Committee of the Red Cross, Belgrade and Pristina delegations, in coordination with all relevant institutions and civil society organizations alone can and should be a part of the database of active cases of missing persons in the Western Balkans, since it fulfills all internationally recognized criteria and is verified by all participants in the process. The position is that the inclusion of separate lists would lead to disagreements between the Belgrade and Pristina delegations, within the Belgrade – Pristina dialogue. By doing so, the importance that the Belgrade delegation attaches to this issue has been emphasized as well as the responsible approach and commitment to solving the issue, regardless of any difference expected from other parties in this process.

21. In order to take the process forward, it is necessary that Pristina delegation responsibly approaches to solving this problem. Bearing in mind that during 2015 no remains of missing persons of Serbian or Non-Albanian nationality were found or identified, Belgrade delegation requested from Pristina delivery of relevant information that would serve for finding and handing over of the remains of the victims to the families, and to open the archives of the KLA (copies of the KLA records submitted by the Belgrade delegation, seized by KFOR between 1999-2003), containing relevant information that could be useful for resolving the missing persons issue.